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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------|
| 10/723,716 | 11/26/2003 | Prathyusha K. Salla | 132958-2 (GEMS:0262/YOD) | 9778 |
| 68174 | 7590 | 10/28/2010 | EXAMINER | |
| GE HEALTHCARE c/o FLETCHER YODER, PC P.O. BOX 692289 HOUSTON, TX 77269-2289 | | | WEATHERBY, ELLSWORTH | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3768 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|--|--|---|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/723,716</p> | <p>Applicant(s) SALLA ET AL.</p> | |
| | <p>Examiner ELLSWORTH WEATHERBY</p> | <p>Art Unit 3768</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding claims 8, 20, 31, 38, and 40, Applicant alleges that Huesman does not expressly teach the extraction of two or more prospective gating points and one or more motion compensation factors via processing a set of motion data. Here, applicant specifically alleges that Huesman does not teach a motion compensation factor. The Examiner respectfully disagrees. Looking to the cited passages of Huesman, the Examiner quickly finds that the processed motion data from the electrical and non-electrical sensor data is used to extract motion compensation factors (pg. 9-pg. 10). Applicant contends that if the registration is performed on the image data that is excluded as prior art. Here, the Examiner disagrees. The claims call for acquiring electrical, e.g. EKG as taught by Heusman, and non-electrical motion data, e.g. pneumatic bellows as taught by Heusman. These are processed to extract two or more prospective gating points, either a cardiac state or a respiratory state (Fig. 5, Fig. 7). Subsequently, motion compensation factors are acquired from the processed data (pg. 9-10) and an image is produced in which respiratory motion artifacts have been removed through the use of motion compensation factors.

Further regarding claims 8, 20, 31, 38 and 40, Applicant alleges that the Examiner does not expressly set forth which of the secondary references in the 103 rejection of the claims discloses motion compensation factors. The Examiner will clarify. As an example, Stuber at page 582 uses a correction factor for motion compensation. That is, the Examiner maintains that the Stuber prior art reference makes the claim limitations apparent through the express teachings of navigator-gated and motion corrected, electrocardiography triggered k-space gradients sequences to acquire image data. These were cited as overcoming the deficiencies of Yuan.

Regarding claim 39, applicant alleges that the disclosure of Huesman does not teach data processing circuitry...configured to validate a set of motion data using another set of motion data derived from a data set acquired by an imager. Here, the Examiner agrees Huesman does not expressly teach a data processing circuitry that is further configured to validate the set of motion data using an additional set of motion data derived by the imager.

Regarding claims 1, 15, 25, 37, and 39 Applicant alleges that the Stuber fails to cure the deficiencies of Yuan. Specifically, Applicant alleges that Stuber does not teach or suggest validating a set of motion data using the one or more sensors by using another set of motion data derived from a dataset acquired via the imager. The Examiner disagrees. As acknowledged by Applicant, Stuber was cited for teaching acquiring a set of motion data using one or more sensors, e.g. EKG gated images. However, Stuber goes on to teach validating the set of motion data using another set of motion data derived from a dataset acquired via an imager, i.e. images are accepted or rejected based on the navigator image data (e.g. pg. 212 col. 3). Thus, the Examiner maintains that Stuber cures the cited deficiencies of the primary reference, Yuan. Furthermore and because Applicant has not set forth additional arguments regarding the alternative secondary references, the Examiner maintains that similar to Stuber both Felbinger and Manke cure the cited deficiencies of Yuan.

Regarding dependant claims 3, 10, 17 and 22, Applicant alleges that the prior art references do not teach that wherein generating an image comprises fusing structural image data with image data representative of motion or electrical activity. The Examiner concedes that this is not taught in the prior art of record. However, the claims stand rejected under the double patenting rejection and would be allowable pending the filing of the terminal disclaimers and the claim's incorporation in to their respective parent claims.

Accordingly and because Applicant has not set forth any further arguments, Claims 1-2, 4-9, 11-16, 18-21 and 23-25, 28-40 stand rejected on the grounds set forth in 07/20/2010 Final Rejection, Claims 3, 10, 17 and 22 stand rejected under obviousness type double patenting, and Claims 26-27 stand objected as being dependant upon a rejected base claim.